

REMARKS

Reconsideration of the present application is respectfully requested in view of the above Amendments and the following Remarks. Applicants thank the Examiner for withdrawing the restriction requirement set forth in the Office Action mailed by the PTO on July 18, 2007. Claims 11-13 and 15-24 are pending and currently under examination in the present application. By the amendment submitted herewith, claims 16, 19, and 21 are canceled without prejudice to the prosecution of the encompassed subject matter in any related continuation, continuation-in-part or divisional application, and claims 15, 18, 20, and 22 are amended to more particularly point out and distinctly claim certain embodiments encompassed by the invention. Upon entry of the Terminal Disclaimer and the amendments submitted herewith, applicants believe all issues are removed and the application is placed in condition for allowance.

Support for the present amendments may be found in the application, for example, in the specification at page 5, lines 4-8; at page 12, lines 9-18, and elsewhere, and in the claims as originally filed. No new matter is introduced by way of the present amendment.

Double Patenting

The Examiner rejects claims 11-13 and 15-24 on the grounds of alleged nonstatutory obviousness-type double patenting over claims 1-3 of U.S. Patent No. 6,605,461 (“the ‘461 patent”). The Examiner concedes that the conflicting claims are not identical, but asserts that the claims in the ‘461 patent encompass the same bacterial strains recited in the instant claims, and further asserts that it would have been obvious to produce a fermentation broth, as presently claimed, that comprises these bacterial strains.

Applicants traverse this rejection and submit that the instant claims are non-obvious over claims 1-3 in the ‘461 patent. Nonetheless, without acquiescence in any rejection, applicants submit herewith a Terminal Disclaimer with respect to U.S. Patent No. 6,605,461, thereby obviating the present rejection. Applicants therefore respectfully request withdrawal of this double patenting rejection.

Rejections Under 35 U.S.C. § 102/103

The Examiner rejects claims 15, 17-18, 20, 23, and 24 under 35 U.S.C. § 102(b) as allegedly anticipated by, or in the alternative under 35 U.S.C. § 103(a) as allegedly obvious over, Pollock (U.S. Patent No. 5,854,034). The Examiner concedes that Pollock does not teach the characteristics and conditions identical to those recited in the instant claims, but asserts that the presently claimed product is either identical to the polysaccharide produced in Pollock, or could have been obtained by a person of ordinary skill in the art through routine experimentation.

Applicants traverse this rejection and submit that the instant claims satisfy the requirement for nonobviousness under 35 U.S.C. § 103(a). Nevertheless, without acquiescing in any rejection, without prejudice to the prosecution of the encompassed subject matter in any related continuation, continuation-in-part or divisional application, and solely for purposes of advancing the prosecution of this application by placing the claims in condition for allowance, the instant claims as presently amended are directed, in pertinent part, to the recited fermentation broth obtained by a process comprising culturing *Sphingomonas* bacteria selected from ATCC PTA-3487, ATCC PTA-3486, ATTC PTA-3485, ATCC PTA-3488, and mixtures thereof. Applicants respectfully note that the instant claims as amended incorporate the subject matter of claims 16, 19, and 21, which claims were not rejected in the outstanding Final Office Action for any deficiencies in view of the prior art.

Applicants therefore submit that the instant claims satisfy the requirements for novelty and non-obviousness under 35 U.S.C. § 102 and 35 U.S.C. § 103, respectively, and respectfully request reconsideration and withdrawal of the Examiner's rejections of these claims.

Applicants submit that all of the claims in the application are allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,

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Enclosure:

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